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THE CONCEPT OF A UNIFIED COURT SYSTEM†

Allan Ashman* and Jeffrey A. Parness**

The ever-increasing workload of the various state court systems has recently generated a widespread interest in the possible mechanisms for court reform. The concept of the unified court system has been and will continue to be one of the prime vehicles for achieving meaningful court reform. The authors herein review the history of this concept, outline its basic principles, and assess its future role.

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† The material for this Article was assimilated while the authors were engaged in a national survey of courts of limited and special jurisdiction being conducted jointly by the American Judicature Society and the American Judges Association. The survey was made possible by a grant from the Law Enforcement Assistance Administration. A companion article emerging from this survey and focusing on the Illinois court system is tentatively scheduled to appear in a subsequent issue of the *University of Illinois Law Forum*.

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INTRODUCTION

SINCE the turn of the century, the concept of a unified court system has been pivotal in nearly every attempt to restructure and reorganize America's trial courts. Although the concept is not unfamiliar to persons involved in court modernization, its precise meaning remains elusive. This Article seeks to shed some light on the meaning of the concept. The discussion is divided into three segments: a review of the historical and present-day thinking about the concept; an examination of the basic tenets that generally are believed to be embodied in the concept; and an analysis of the concept's significance with respect to the future administration of justice in America. Hopefully, the ensuing discussion will serve to eliminate some of the current confusion surrounding the meaning of the concept and to spur further thought, debate, and implementation of the concept's basic principles.

The concept of a unified court system describes neither a particular state court system nor a specific type of state court system. Rather, it characterizes a state court system wherein the courts are organized and managed in such a way as to provide, as nearly as possible, a uniform administration of justice throughout that state. It is conceivable that court systems which appear dissimilar may all be denominated as "unified."

Much of the discussion of the unified court concept will be confined to a consideration of state trial courts. A discussion of the role of intermediate state appellate courts, courts of last resort, and federal courts within the unified court concept is deferred for subsequent analysis.¹

THE UNIFIED COURT CONCEPT:
A REVIEW OF PAST AND PRESENT THINKING

Origins of the Concept

Generally, it is agreed that the concept of a unified court system was introduced into this country's legal thinking by Roscoe Pound in an address delivered at the 1906 annual convention of the Ameri-

1. For a discussion of the concept of court unification as it currently relates to state appellate courts, see Guittard, *Unifying the Texas Appellate Courts*, 37 TEXAS B.J. 317 (1974).

can Bar Association in St. Paul, Minnesota.² Pound's speech dealt with the causes of public dissatisfaction with the administration of civil justice in America. As one of the major causes of public dissatisfaction, Pound cited the "archaic" nature of American judicial organization and procedure.³ He stated that the nation's court systems were deficient in three major respects: First, in their multiplicity of courts; second, in preserving concurrent jurisdictions; and third, in the inherent waste of judicial power. "The judicial organizations of the several states exhibit many differences of detail," he noted, "but . . . agree in these three respects."⁴

To eradicate the displeasure and inconvenience caused by poor court organization and procedure, Pound suggested that states adopt various principles of court unification. The cornerstone of his approach was the consolidation of all state appellate and trial courts into one Supreme Court of Judicature with two branches—a court of first instance and a court of appeal. According to Pound, such a consolidation would have the following salutary effects: help focus the judiciary's attention on litigants' causes of action rather than on techniques of appellate procedure; greatly reduce case dismissals because of errors in the choice of forums; and lessen the "waste" of judicial manpower by eliminating much of the idleness and unnecessary retrials.

These ideas were not original. Pound drew heavily from the English Judicature Act of 1873.⁵ Pound's contribution was to relate prior English experience to the needs of the American justice sys-

2. Pound's address was entitled *The Causes of Popular Dissatisfaction with the Administration of Justice*, and is reprinted in 46 J. AM. JUD. SOC'Y 55 (1962) [hereinafter cited as Pound]. Years later, Dean Wigmore referred to the address as "the spark that kindled the white flame of high endeavor, now spreading through the entire legal profession and radiating the spirit of resolute progress in the administration of justice." Wigmore, *The Spark that Kindled the White Flame of Progress—Pound's St. Paul Address of 1906*, 46 J. AM. JUD. SOC'Y 50 (1962). For an excellent account of Pound's role in promoting the concept of unified courts in America, see Lowe, *Unified Courts in America: The Legacy of Roscoe Pound*, 56 J. AM. JUD. SOC'Y 316 (1973).

3. Pound, *supra* note 2, at 62. The other causes cited were (1) causes for dissatisfaction with any legal system, (2) causes lying in the peculiarities of our Anglo-American legal system, and (3) causes lying in the environment of our judicial administration. *Id.* at 56.

4. *Id.* at 62.

5. *Id.* at 62-63.

tem.⁶ Despite his apparent disappointment over England's refusal to implement fully the ideas contained in its own Judicature Act,⁷ Pound looked to the act as a model for future judicial organization in America.

Although Pound's address was the first major pronouncement to the legal profession on the potential adaptability of the unified court concept to American courts, at the time of the speech at least one American court, the Municipal Court in Chicago, already had embraced several underlying components of the concept. The institution of this court in 1906 was later hailed by Pound as "a distinct advance in judicial organization in America." Specifically, Pound cited the fact that the court had an administrative head with power to control its administrative agencies, utilize its personnel for the speedy disposition of business, and adjust its organization periodically to meet existing workloads. Pound also praised the fact that the court was given full power to make rules of procedure and was not hampered by detailed legislative provisions as to practice.⁸

Pound's analysis of the effects of poor court organization and procedure remains sound today, and many American state court systems remain "archaic." Although most judges, legislators, and commentators agree that the dissatisfaction noted by Pound still exists and that the unified court concept can help to alleviate it, no general consen-

6. Although such an application of the English experience to American court systems may seem at first to be a rather minor development in this country's history of judicial administration, a complete understanding of the circumstances surrounding Pound's speech leads one to the opposite conclusion. Dean Wigmore, who himself was present for the St. Paul speech, saw it as "the catechism for all progressive-minded lawyers and judges;" yet he reported that the speech was initially received with "resentment" and "astonishment". Wigmore, *supra* note 2, at 52-53. Shortly after the speech was given, James D. Andrews of New York addressed the A.B.A. convention as follows:

Now, I want to say that however much we might admire parts of the paper, a more drastic attack upon the system of procedure employed by the courts in the United States, as a whole and *in toto*, could scarcely be devised. . . . I will undertake to show the contrary of every one of the material positions taken in the paper 29 A.B.A. REP. PT. I, at 12-13 (1906).

7. Pound, *supra* note 2, at 63.

8. Pound, *The Administration of Justice in the Modern City*, 26 HARV. L. REV. 302, 313 n.29 (1913). Problems did remain in the judicial administration in Chicago. In this same essay, Pound illustrated how a single family dispute could lead to adjudication in four separate courts in Chicago at the same time—the juvenile court, a court of equity, a court of law, and the criminal court or domestic relations court. *Id.* at 313.

sus has yet been reached on what constitute the basic elements of the unified court concept.

National Municipal League Model

Since 1906, several model judicial articles have been drafted and have served as guidelines for those hoping to establish more effective court systems. Although they all called for court unification and for more efficient and just judicial systems, these articles varied widely in their descriptions of what actually is embodied in a model court system. Similar differences were reflected in the content of court studies and legal commentaries on the subject of court unification.

One of the earliest model judicial articles seeking to promote court unification for state court systems was published by the American Judicature Society in 1920.⁹ The article was drafted at the request of the National Municipal League and was submitted to its Committee on State Government.¹⁰ According to this model, court unification could be best accomplished by general amendments to a state's constitution together with a schedule of legislation complementing the new constitutional provisions.¹¹

This approach was based on two major premises. First, the Society felt that, generally, the state courts were poorly administered. In introducing its model article, the Society stated:

Valid complaint of the courts is largely directed to the administrative side of the judicial function. In a final analysis, it means that the courts do not employ businesslike methods for doing what is actually judicial business. The judicial system . . . is composed of a large number of separate units with no sufficient means for coordinating their effort It is, in fact, an extensive institution without a brain.¹²

9. The final draft of the model article appears in *Draft Judiciary Article*, 3 J. AM. JUD. SOC'Y 132, 135 (1920). Earlier versions of this article appeared in print in October, 1914 and in March, 1917. *The State-Wide Judicature Act*, 1 J. AM. JUD. SOC'Y 101 (1917). It should be noted that much of the Society's thinking about unification was influenced by an earlier A.B.A. committee report which discussed state court unification. The A.B.A. report appears in 34 A.B.A. REP. 578, 589-95 (1909). The Society recognized the 1909 A.B.A. report as the work where "the conception of the unified state court system first received adequate expression." *The State-Wide Judicature Act*, *supra* at 101.

10. *Editorial*, 3 J. AM. JUD. SOC'Y 131, 132 (1920).

11. From our research, it seems that almost all individual state attempts to unify their court systems have followed this theory.

12. *Model Judiciary Article: Introduction*, 3 J. AM. JUD. SOC'Y 132 (1920).

Second, the Society believed that state legislatures were not directing the efforts of most state court systems properly. The Society cited legislative attempts to direct court systems through legislation, thus violating the separation of powers doctrine and restricting the administrative flexibility of the courts to meet their own needs.¹³ To alleviate this second defect, the Society incorporated into its idea of court unification the principle of court control over its own practice and procedure through the rule-making process.¹⁴

The Society's 1920 model article envisioned only three courts in a state's judicial system—a supreme court to handle all appellate business, a district court for “trials of all kinds,”¹⁵ and a county court for the “special convenience of each separate county.”¹⁶ The model article placed the responsibility for managing all these courts in a council of judges composed of representatives from the judges of the three courts. Such responsibility included the exclusive power to make rules of procedure for all three courts, to regulate all the ministerial officers of the three courts, to reduce the number of justices of the peace, and to control the various calendars of cases and the assignment of judges to special calendars.¹⁷

Several other features of the model act merit comment. For example, while the judicial system was not to be wholly state-financed unless the legislature so provided,¹⁸ all court officers were to be paid by the state¹⁹ with all fees and fines going to the state.²⁰ At least

13. *Id.* at 132-33.

14. *Id.* at 133.

15. *Id.* The model article does permit some appellate jurisdiction in the district court in cases appealed from the county court. The article recognizes that “appeals from local courts present a difficult problem, one which has never been solved satisfactorily.” *Draft Judiciary Article*, *supra* note 9, § 7, at 136. It also allows for a limitation on district court jurisdiction so that the problem of concurrent jurisdiction can be avoided. *Id.* In an earlier and more elaborate version of the model act, the drafters referred to the district court as the superior court, and contemplated that this second type of court would be organized into two divisions—a chancery, probate, and domestic relations division and a common law division. *Second Draft of a State-Wide Judicature Act*, BULLETIN VII-A OF THE AM. JUD. SOC'Y, Appendix A, 134-36 (Mar. 1917).

16. *Model Judiciary Article: Introduction*, *supra* note 12, at 133. See also *Draft Judiciary Article*, *supra* note 9, § 1, at 135.

17. *Draft Judiciary Article*, *supra* note 9, at 134 and § 15, at 139.

18. *Id.* § 20, at 141.

19. *Id.*

20. *Id.* § 21, at 141.

once a year, a meeting of all judges was to be held with separate meetings of supreme court judges and district court judges required quarterly.²¹ Court statistics would be collected centrally²² and the judicial system's chief justice—chosen in a general election—would have many administrative duties, such as publishing annual reports, presiding over judicial council meetings, and presiding as the judicial system's executive head.²³ The legislature was empowered to enact laws in conflict with the article when requested by a majority of the judicial council including the chief justice.²⁴

The Society's model act subsequently was adopted by the National Municipal League with only one modification, that concerning the manner of judicial selection.²⁵ The League supported the Society's model until approximately 1937. During this time the Society's model article was instrumental in the creation of several state judicial councils, the return of much of the rule-making power to the state courts, and in several other areas of judicial administration.²⁶ However, by 1937 no state had approved the entire "ideal judicial article," although several states, particularly Missouri, had made genuine efforts to do so.²⁷ The Society reported in 1937 that since the League adopted the model article, the League had "devoted its attention mainly to city and county government and its model state constitution has not received the publicity which its importance justifies."²⁸

By 1942, the League had revised substantially the Society's model article. The revision may well have been spurred by the actions of the 1938 A.B.A. convention, which will be discussed later in this

21. *Id.* § 18, at 140.

22. *Id.* § 11, at 137. See also *Model Judiciary Article: Introduction*, *supra* note 12, at 134.

23. *Draft Judiciary Article*, *supra* note 9, § 11, at 137. For an elaboration on why the Society mandated that much of the court system's administrative tasks be the chief justice's responsibility, see *Second Draft of a State-Wide Judicature Act*, *supra* note 15, § 4 and the subsequent commentary, at 7-9.

24. *Draft Judiciary Article*, *supra* note 9, § 22, at 141.

25. *Id.* § 10, at 137. Cf. *Judiciary Article in Model State Constitution*, 20 J. AM. JUD. SOC'Y 189, § 60, at 191 (1937).

26. *Judiciary Article in Model State Constitution*, *supra* note 25, at 189.

27. *Id.*

28. *Id.*

Article. The League's 1942 model constitution contained the following major changes with respect to key elements in the unified court concept. First, it placed the prime responsibility for the organizational structure of the state judicial system and for its personnel in the legislature.²⁹ Second, it weakened the constitutional powers of the judicial council. For example, the council no longer had "exclusive" rule-making power.³⁰ Third, it altered the composition of the judicial council by adding non-judicial representatives including laymen, lawyers, and a legislator.³¹

At least two of these three major changes drew heavy criticism from the Society. With regard to structure, the Society continued to urge explicit constitutional recognition of the district and county court.³² As to the composition of judicial councils, the Society feared that they might become dominated by their non-judicial members if the new article was followed.³³ With respect to the change in the rule-making power, the Society simply stated that "the initial responsibility is placed where it should be, in the judicial council."³⁴

Since 1942, the National Municipal League has published further revisions of a model constitution. While these editions have held consistently to the goal of court unification, they have not been as firm in their descriptions of what constitute the major elements of the unified court concept.

A 1948 revision indicated that the judicial power of the state "shall be vested in a general court of justice, which shall include a supreme court department and such other departments and subdivisions and as many judges as may be provided by law."³⁵ An explanatory note defended this broad outline by citing the need for flexibility.³⁶

29. *Model Judiciary Article and Comment Thereon*, 26 J. AM. JUD. Soc'y 51, § 600, at 53 (1942).

30. *Id.* § 607, at 58.

31. *Id.* § 606, at 58.

32. *Id.*, comment following § 600, at 53.

33. *Id.*, comment following § 606, at 58.

34. *Id.*, comment following § 607, at 58-59.

35. NATIONAL MUNICIPAL LEAGUE COMM. ON STATE GOV'T, MODEL STATE CONSTITUTION WITH EXPLANATORY NOTES 10 (5th ed. 1948). This, incidentally, was quite similar to the 1942 edition. *Model Judiciary Article and Comment Thereon*, *supra* note 29, § 600, at 53. Yet it is quite different from the 1920 edition. *Draft Judiciary Article*, *supra* note 9, § 1, at 135.

36. MODEL STATE CONSTITUTION WITH EXPLANATORY NOTES, *supra* note 35, art. VI, at 36.

But a 1962 revision stated that the judicial power of the state "shall be vested in a unified judicial system, which shall include a supreme court, an appellate court and a general court, and which shall also include such inferior courts of limited jurisdiction as may from time to time be established by law."³⁷ The commentary to this revision noted that it represented "no break" in policy with the League's long established position in support of a unified and flexible judicial system. According to the League, the draft merely reflected elaborations or modifications of principles established earlier, on the basis of additional experience.³⁸

Other important changes were made in the 1962 edition of the League's model judicial article. First, the constitutional provision for a judicial council was omitted.³⁹ Second, the article called for state financing of the entire judicial system.⁴⁰ Third, the rule-making power was placed in the supreme court, subject to legislative change by a two-thirds vote of the members.⁴¹

The A.B.A.'s Position on the Unified Court Concept

Like the American Judicature Society and the National Municipal League, the American Bar Association consistently has acknowledged the importance of the unified court concept in American judicial administration. The A.B.A. also has changed its position periodically with respect to the components of the unified court concept.

The A.B.A.'s first major action concerning the concept came in a 1909 report of its Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in

37. NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION, § 6.01, at 15-16 (6th ed. 1962).

38. *Id.*, introductory comment to art. VI, at 77.

39. *Id.*, art. VI, at 15-19.

40. *Id.* § 6.06, at 19. This section reads: "The chief judge shall submit an annual consolidated budget for the entire unified judicial system, and the total cost of the system shall be paid by the state. The legislature may provide by law for reimbursement to the state of appropriate portions of such cost by political subdivisions."

41. *Id.* § 6.07, at 19. The Executive Director of the National Municipal League has stated that the sixth edition of the League's *Model State Constitution* is the current edition. Letter from William N. Cassella, Jr. to Jeffery A. Parness, Apr. 17, 1974, on file with the American Judicature Society.

Litigation. Although the specific portion of the report dealing with the concept never actually came to the floor of the 1909 A.B.A. convention for a vote,⁴² its contents greatly influenced early thinking on court unification in America.⁴³

The Special Committee examined the problem of expense and delay in the administration of justice and found there were essentially four main "factors" in the subject of judicial administration, including judicial organization and the law of procedure.⁴⁴ While the Special Committee felt it was inappropriate at that time to draft detailed legislative proposals on the subject, it did develop principles to guide legislators as to the advisability of drafting legislation in the area of judicial administration and on the scope of such legislation.⁴⁵

The Committee's first principle was that the entire judicial power of a state, at least for civil causes, should be vested in one "Great Court," of which all tribunals should be branches, departments, or divisions. "The business as well as the judicial administration of this court," the committee noted, "should be thoroughly organized so as to prevent not merely waste of judicial power, but all needless clerical work, duplication of papers and records, and the like, thus obviating expense to litigants and cost to the public."⁴⁶

Elaborating on this principle, the Committee pointed out that the Great Court should be organized in three chief branches: county courts (including municipal courts), having exclusive jurisdiction of all petty causes; a superior court of first instance, having two or three divisions;⁴⁷ and a single court of appeals.⁴⁸ One high official of the

42. The only mention of the report's sub-division on unified courts came when Charles A. Boston of New York called the desirability of unifying courts to the attention of the A.B.A. membership and urged fellow members to promote unification proposals such as the one currently before the New Jersey voters. The New Jersey proposal was described as providing for a single court divided into three departments: one of appeal, one of law and one of equity. Boston concluded by calling the concept of unification "the greatest step in advance of judicial organization that I know to have been taken in this country at any time." 34 A.B.A. REP. 85 (1909).

43. See note 9 *supra*.

44. The other two factors were "the personnel, mode of choice and tenure of judges, and . . . the organization, training and traditions of the Bar." 34 A.B.A. REP. 588 (1909).

45. *Id.*

46. *Id.* at 589.

47. The three divisions were law, equity, and "probate, administration, guardianship and the like." *Id.* at 589.

48. *Id.* at 589-90.

court was designated to have administrative responsibility in matters such as judicial and case assignment.⁴⁹ The Committee believed that this organizational scheme presented the best opportunity for effective court administration.⁵⁰

The Committee's second principle was that procedural details should be left to rules of court instead of being prescribed by legislative action.⁵¹ According to the Committee, statutes should deal only with the general features of procedure and prescribe the general lines to be followed, leaving details to be fixed by rules of court. The courts could change these details as actual experience of their application and operation dictated.⁵²

The Committee's rationale for this position was that pleading and practice were originally the work of courts, and that it was a mistake for legislators to delve into their minute details. The Committee noted that

[a] statute going into minute detail to begin with, soon to be swollen by legislative additions and overgrown with amendments and a gloss of judicial decisions, is not the practice act of the future. The ideal would be a clear and scientific outline, of say one hundred sections, laying out the limits and lines of procedure to be developed by rules of court which may be enacted, revised, amended, or abrogated by experts as exigencies of judicial administration demand.⁵³

In other areas, the Committee sought to give power to appellate courts to take further evidence⁵⁴ and also sought to abolish the fee system wherever it still existed.⁵⁵

The next major A.B.A. action on the unified court concept did not occur until 1938. At that time the A.B.A. House of Delegates approved sixty-six resolutions submitted by its Section on Judicial Administration.⁵⁶ The American Judicature Society called this action "the most important thing that has occurred in respect to civil

49. *Id.* at 590.

50. *Id.* at 593-95. For a discussion of the nine advantages the Committee saw in its plan *see* pp. 26-27 *infra*.

51. *Id.* at 595.

52. *Id.*

53. *Id.* at 596-97.

54. *Id.* at 598.

55. *Id.* at 600.

56. 63 A.B.A. REP. 522 (1938). *See also* 24 A.B.A.J. 685-786 (1938).

procedure in our generation."⁵⁷

Several of these resolutions dealt with the elements of court unification, calling for the courts to be given full rule-making power,⁵⁸ requiring quarterly judicial statistics,⁵⁹ and declaring "that provision should be made in each state for a unified judicial system with power and responsibility in one of the judges to assign judges to judicial service so as to relieve congestion of dockets and utilize the available judges to the best advantage."⁶⁰ Other relevant resolutions held that judicial councils be given additional powers, with representation on them granted to members of the bar and of the judiciary committees of the legislative department,⁶¹ and that appeals from inferior courts by way of full re-trial in a higher court be avoided whenever possible.⁶²

Almost a quarter of a century passed before the A.B.A. once again formally addressed itself to the concept.⁶³ In 1962, a model state judicial article, drafted by a committee of the A.B.A.'s Section on Judicial Administration,⁶⁴ was adopted by the House of Delegates. The announced purpose of this model article was the furtherance of the administration of justice in all the courts of the several states. The article was based specifically on the earlier 1938 resolutions stating certain minimum standards for judicial administration,⁶⁵ and its provisions closely paralleled the content of the 1938 resolutions.⁶⁶

57. *Standards of Judicial Administration Adopted*, 22 J. AM. JUD. SOC'Y 66 (1938).

58. *Recommendation (1) of the Comm. on Jud. Adm.*, 63 A.B.A. REP. 523 (1938).

59. *Recommendation (4) of the Comm. on Jud. Adm.*, 63 A.B.A. REP. 523 (1938).

60. *Recommendation (2) of the Comm. on Jud. Adm.*, 63 A.B.A. REP. 523 (1938).

61. *Recommendation (3) of the Comm. on Jud. Adm.*, 63 A.B.A. REP. 523 (1938).

62. *Recommendation (1) of the Comm. on App. Procedure*, 63 A.B.A. REP. 527 (1938).

63. 87 A.B.A. REP. 132, 391 (1962).

64. Holt, Jr., *The Model State Judicial Article in Perspective*, 47 J. AM. JUD. SOC'Y 6, 8 (1963).

65. 87 A.B.A. REP. 391 (1962).

66. The text of the Model State Judicial Article with comments can be found in 87 A.B.A. REP. 392-99 (1962) or in *Text of the Model State Judicial Article*, 47 J. AM. JUD. SOC'Y 8-12 (1962).

The first provision of the 1962 article stated that the judicial power of the state was to be vested exclusively in one Court of Justice which was to be divided into one supreme court, one court of appeals, one trial court of general jurisdiction called the district court, and one trial court of limited jurisdiction called the magistrate's court.⁶⁷ The district court was to have as many divisions and the district court and the magistrate's court were to have as many judges as the supreme court believed necessary, except that each district was to be a geographic unit fixed by the supreme court and have at least one judge. Every judge of the district and magistrate's courts would be eligible to sit in every district.⁶⁸ The district court was to exercise original general jurisdiction in all cases, "except in so far as original jurisdiction may be assigned exclusively to the magistrate's court by the supreme court rules." The district court also could be authorized to review directly decisions of the magistrate's court.⁶⁹

Concerning the power of the chief justice of the supreme court, the article stated that he would be "the executive head of the judicial system and shall appoint an administrator of the courts . . . to aid the administration of the courts of the state." The chief justice could assign any judge or magistrate to sit in any court in the state when he deemed such assignment necessary. Under the direction of the chief justice, the court administrator would prepare and submit to the legislature the court's budget and would perform all other necessary administrative functions relating to the courts.⁷⁰

With respect to rule-making, the article empowered the supreme court to prescribe rules governing appellate jurisdiction, rules of practice and procedure, rules of evidence, and rules to govern bar admission and the discipline of members of the bar.⁷¹ The commentary acknowledged both the possible use by the court of "a judicial council or any other body of experts to advise it in the formulation of

67. 87 A.B.A. REP. 392 (1962). The Committee's comments to the provision declared that the intent was to set up a single unified judicial system, and it also recognized the need to provide for a possible intermediate appellate court because of the state's experience since 1938 with the problem of congestion in the appellate system. *Id.*

68. *Id.* § 4, para. 1, at 394.

69. *Id.* § 4, paras. 2-3, at 395.

70. *Id.* § 8, para. 2, at 397-98.

71. *Id.* § 9, at 398.

rules,"⁷² and the controversial nature of the decision to grant the court power to prescribe rules of evidence.⁷³

The A.B.A.'s 1962 model article varies in several respects from earlier A.B.A. resolutions and particularly from other earlier model constitutions. It provided for an administrator of the state courts where a unified system is established, with much of the administrative responsibility for the court system initially placed upon his shoulders rather than upon those of the chief justice.⁷⁴ For example, pursuant to the model article the major responsibility for preparing the court system's budget rested constitutionally with the court administrator.⁷⁵ It made no provision for any form of judicial council. It placed within the constitutional framework the form of trial and limited courts, thus abandoning earlier calls for "flexibility."⁷⁶ And finally, it left the jurisdictional limits of courts of limited and special jurisdiction to the discretion of the supreme court rather than to the state legislature.⁷⁷

While there appears to have been no major revisions of the A.B.A. model judicial article since 1962, several major statements on state court organization have been issued by the A.B.A. since that time. When read in light of earlier A.B.A. positions, some of these subsequent statements have been both contradictory and confusing.

Specifically, the A.B.A.'s Section on Judicial Administration published in 1971 the fifth edition of a handbook entitled *The Improvement of the Administration of Justice*.⁷⁸ (Apparently the first edition was the 1938 report of the Section which included the sixty-six resolutions.⁷⁹) Although the handbook acknowledged both the A.B.A. and N.M.L. model judicial articles,⁸⁰ its chapter on court structure made no specific comment on the ideal structure of a state

72. *Id.* § 9, Committee comment, at 398.

73. *Id.*

74. *Id.* § 8, para. 2, at 397-98.

75. *Id.*

76. See notes 36 and 37 *supra*.

77. See note 69 *supra*. Cf. notes 29 and 35 *supra*.

78. A.B.A. SECTION ON JUDICIAL ADMINISTRATION, *THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE* (5th ed. 1971) [hereinafter cited as *JUDICIAL ADMINISTRATION*].

79. McAllister, *Foreword* to *THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE* at xi (5th ed. 1971).

80. *JUDICIAL ADMINISTRATION*, *supra* note 78, at 11 and App. B, at 156-64.

court system.⁸¹ It simply noted that states should have a simplified court structure, and "that fragmentation of specialized and limited jurisdiction of the courts in populous areas may impede the realization of full judicial efficiency and contribute in some measure to congestion and delay in the handling of certain categories of cases."⁸² But another chapter in the handbook discussed needed improvements in the limited and special jurisdiction courts, without mentioning either their consolidation into one trial court of general jurisdiction, as many urged,⁸³ or their consolidation into a single limited jurisdiction court, as the A.B.A.'s own 1962 model judicial article had recommended.⁸⁴

The 1971 handbook also discussed at some length "the essentials of effective court administration."⁸⁵ It defined court administration as "the business-like management of the operation of the courts by personnel trained for such duties."⁸⁶ Court administration was described as most effective when a court employs both an administrative judge(s) and a court administrator(s).⁸⁷

With respect to rule-making, the handbook cited with approval the A.B.A.'s 1938 resolution on the subject,⁸⁸ emphasizing that full rule-making in the courts is essential to an efficient judicial system.⁸⁹ The handbook also recommended the operation of both a judicial council and a judicial conference in each state.⁹⁰

In February 1974, the A.B.A.'s House of Delegates approved, with only minor modifications, the final draft of its Commission on Standards of Judicial Administration publication entitled *Standards Relating to Court Organization*.⁹¹ The Commission's draft embodies

81. *Id.* at 7-11.

82. *Id.* at 9-10.

83. See text accompanying notes 3-7 and 115-18 *supra*.

84. See note 67 *supra*.

85. JUDICIAL ADMINISTRATION, *supra* note 78, at 13-31.

86. *Id.* at 27.

87. *Id.* at 17, 27.

88. *Id.* at 70.

89. *Id.* at 74.

90. *Id.* at 34, 41.

91. A.B.A. COMM. ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO COURT ORGANIZATION (Final Draft 1974) [hereinafter cited as STANDARDS OF JUDICIAL ADMINISTRATION].

by far the most comprehensive A.B.A. description of a model unified court system. The initial standard defines the structure of the unified system as one which facilitates the selection and assignment of competent judicial and auxiliary personnel, sound financial administration, efficient use of manpower, facilities, and equipment, and continuous planning for the future.⁹² Subsequent standards set forth the manner in which a state can achieve these goals.

Although recognizing its roots in such earlier A.B.A. works as the 1938 resolutions and the 1971 revised handbook,⁹³ the Commission's draft contains significant variations from these earlier efforts. In commenting upon the major elements of the concept of a unified court system, the draft states:

The structure of the court system should be simple, preferably consisting of a trial court and an appellate court, each having divisions and departments as needed. The trial court should have jurisdiction of all cases and proceedings. It should have specialized procedures and divisions to accommodate the various types of criminal and civil matters within its jurisdiction. The judicial functions of the trial court should be performed by a single class of judges, assisted by legally trained judicial officers The administrative policy of the court system should be established by the judiciary and administered under the direction of judges . . . (who) should participate in . . . judicial councils . . . and judicial conferences The courts should have authority to prescribe rules of procedure The financial operations of the courts . . . should be managed through a unified budget that includes all courts in the system.⁹⁴

In setting forth a two-tier court system with subdivisions within each tier, this draft differs at least from the 1962 A.B.A. model judicial article. Most significantly, the 1974 draft's contemplated structure includes ideally such characteristics as uniform jurisdiction, simple jurisdictional divisions, uniform standards of justice, clearly vested policy-making authority, and clearly established administrative authority.⁹⁵ Still another illustration of the 1974 Commission's break with the past can be found in the draft's provisions dealing with "judicial officers assisting judges."⁹⁶ The Commission's tenta-

92. *Id.* § 1.00, at 1.

93. *Preface to STANDARDS OF JUDICIAL ADMINISTRATION*, *supra* note 91.

94. *STANDARDS OF JUDICIAL ADMINISTRATION*, *supra* note 91, § 1.10, at 1-2.

95. *Id.* § 1.11, at 2-3. At least one astute observer had predicted five years earlier that "one day the Model Judicial Article will be revised to provide for a two-tier judicial structure." *The Case for Two-Level State Court System*, 50 J. AM. JUD. SOC'Y 185, 186 (1967).

96. *STANDARDS OF JUDICIAL ADMINISTRATION*, *supra* note 91, § 1.26, at 50-52.

tive draft had called these persons "commissioners, associate judges, magistrates and similar officials."⁹⁷ In any event, the final draft makes it clear that these officers would be under the control of the judges, and that they may or may not be "parajudges."⁹⁸

Other Positions

Along with the American Judicature Society, the National Municipal League and the American Bar Association, many other groups and individuals have addressed themselves to the concept of a unified court system. Though these other statements may not arise from a long series of model articles and comments on the subject or may specifically apply the topic to only a very localized area, they have been quite influential in the gradual state movement toward implementation of the key principles of the unified court concept.

Various national study groups and conferences have spoken on the desirability of having unified state court systems.⁹⁹ One such pronouncement came after the three day National Conference on the Judiciary held in Williamsburg, Virginia in 1971, which was attended by representatives of most national legal organizations and by several of the country's leading judges, lawyers, and government officers.¹⁰⁰

The final consensus statement of the conference declared, among other things, that state courts should be organized into a unified judicial system, financed by state government and placed under the supervisory control of the supreme court.¹⁰¹ The statement underscored the need for a state-wide court administrator, for the supreme court to have the power to promulgate rules of procedure and administration, and for only one level of trial courts.¹⁰² Also, the

97. A.B.A. COMM. ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO COURT ORGANIZATION § 1.10, at 2 (Tent. Draft 1973).

98. J. PARNES, THE EXPANDING ROLE OF THE PARAJUDGE IN THE UNITED STATES, AM. JUD. SOC'Y, RESEARCH REPORT NO. 8 (Prelim. Draft 1973).

99. The multitude of such statements prohibits us from reviewing all those which have been made. However, for a good survey of the dialogue, see F. Klein, *Annotated Bibliography* (1971), reprinted at the end of NATIONAL CONFERENCE ON THE JUDICIARY, JUSTICE IN THE STATES (Mar. 11-14, 1971). See also the citations listed in the A.B.A.'s STANDARDS RELATING TO COURT ORGANIZATION, *supra* note 91, and in the National Advisory Commission's COURTS, *infra* note 105.

100. JUSTICE IN THE STATES, *supra* note 99. See also A. LOGAN, JUSTICE IN JEOPARDY (1973).

101. JUSTICE IN THE STATES, *supra* note 99, at 265.

102. *Id.* at 265-66.

consensus statement urged greater and more effective use of para-judicial personnel,¹⁰³ adding: "Civil and criminal matters which can be better handled outside of the judicial system should be eliminated from the jurisdiction of the courts."¹⁰⁴ In general, the Williamsburg consensus statement closely resembled the subsequent *A.B.A. Standards Relating to Court Organization*.

Recently, another such statement on the subject of court unification was issued by the National Advisory Commission on Criminal Justice Standards and Goals.¹⁰⁵ While there is much that is similar to previously cited positions, the Advisory Commission added several rather original elements to its discussion of the concept of a unified court system. For example, it excluded certain traffic violations from the jurisdiction of the unified trial court,¹⁰⁶ stating that these traffic violations "should be made infractions, subject to administrative disposition."¹⁰⁷ It included the possibility that, in light of the experience with traffic matters, consideration might be given to similar treatment of certain non-traffic matters such as public drunkenness.¹⁰⁸ The National Advisory Commission also included in its call for unified courts a mandate that certain services be unified,¹⁰⁹ declaring that pretrial release, probation and other rehabilitative services should be available in all prosecutions within the jurisdiction of the unified trial court.¹¹⁰

Individual commentators also have influenced thinking on the unified court concept. For example, the late Chief Justice Vanderbilt's *Minimum Standards of Judicial Administration* was a monumental effort to explore the extent to which states had followed the A.B.A.'s 1938 standards.¹¹¹ Vanderbilt breathed life into the standards and ultimately paved the way toward a greater understanding of the ac-

103. *Id.* at 265.

104. *Id.*

105. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, COURTS (1973).

106. *Id.* standard 8.1, at 164.

107. *Id.* standard 8.2, at 168.

108. *Id.*

109. *Id.* at 166.

110. *Id.* standard 8.1 at 164. See also Note, *Administration of Pretrial Release and Detention: A Proposal for Unification*, 83 YALE L.J. 153, 178 (1973).

111. A. VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION (1949).

tual meaning of the unified court concept. Even Roscoe Pound spurred new thoughts on the subject by elaborating on the general ideas expressed in his earlier St. Paul address in a 1940 article.¹¹²

In addition, countless local studies and reports have been produced over the years relating the concept of unification to the needs of a particular state or of a specific local trial court.¹¹³ Not surprisingly, these reports differ widely as to what properly constitutes a truly unified court system.¹¹⁴

Self-Proclaimed Unified Court Systems

The foregoing review highlights the confusion and debate over time about the meaning of the unified court concept. An examination of how some states perceive and individually apply the concept today best illustrates the continuing differences with respect to the meaning of court unification.

Currently, Illinois views its judicial system as a "model which every state in the Union is attempting to emulate."¹¹⁵ It claims to have pioneered the unified trial court structure.¹¹⁶ The Constitution of 1970, under which the present Illinois court system is now operating, vests the judicial power in a "Supreme Court, an Appellate Court, and Circuit Courts."¹¹⁷ The circuit courts are trial courts of general jurisdiction, and they have "original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction."¹¹⁸

There are now twenty-one circuit courts operating in Illinois, with the Circuit Court of Cook County being the largest. Apart from

112. *Roscoe Pound and Court Unification*, 23 J. AM. JUD. SOC'Y 172 (1940); Pound, *Principles and Outline of a Modern Unified Court Organization*, 23 J. AM. JUD. SOC'Y 225 (1940).

113. Note 99 *supra*.

114. *Compare* CITIZEN'S STUDY COMMITTEE ON JUDICIAL ORGANIZATION, REPORT TO GOVERNOR PATRICK J. LUCEY (Wis. 1973) with BOOZ, ALLEN, AND HAMILTON, INC., FINAL REPORT ON THE CALIFORNIA LOWER COURT STUDY (1971) and AND JUSTICE FOR ALL, REPORT OF THE TEMPORARY COMM. OF THE N.Y. STATE COURT SYSTEM pts. I, II, and III (1973).

115. ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS, 1972 ANNUAL REPORT TO THE SUPREME COURT OF ILLINOIS 9.

116. *Id.*

117. ILL. CONST. art. VI, § 1.

118. *Id.* § 9.

the Circuit Court of Cook County, which has jurisdiction over only one county within the state, the circuit courts cover territorial areas embracing anywhere from two to twelve counties. These courts are manned by circuit judges and associate judges.¹¹⁹ The 1970 Constitution vests in the supreme court general administrative and supervisory authority over the circuit courts and over all other courts in the system. This authority is constitutionally exercised by the court's chief justice pursuant to the court's rules.¹²⁰ The court system of Illinois is financed by state and county governments.¹²¹ The Illinois Supreme Court has exercised complete rule-making power for approximately the past twelve years even though legislative action in the area appears technically possible.¹²²

New York's constitution claims it too establishes a unified court system for that state, but the composition of its system differs markedly from the one in Illinois. The state-wide courts for New York include the court of appeals, the supreme court including appellate divisions, the court of claims, the county courts, the surrogate's court, and the family court.¹²³ For the city of New York, as part of the state's unified court system, there exists a single, city-wide court of civil jurisdiction and a single, city-wide court of criminal jurisdiction.¹²⁴ Outside the city of New York, the New York state unified system encompasses district, town, city, and village courts.¹²⁵ The court system in New York is under the direct administrative supervision of the Administrative Board of the Judicial Conference—consisting of the chief judge of the court of appeals and of the four presiding justices of the four appellate divisions.¹²⁶ The court system

119. *Id.* §§ 7-8.

120. *Id.* § 16. The 1970 Constitution specifically mandates court action in one area by stating that the "Court shall appoint an administrative director and staff" to serve at its pleasure and to assist the chief justice; and it recognizes possible court action in another area by declaring that the court "may assign a Judge temporarily to any Court and an Associate Judge to serve temporarily as an Associate Judge on any Circuit Court."

121. *Id.* § 14.

122. J. PARNES & C. KORBAGES, A STUDY OF THE PROCEDURAL RULE-MAKING POWER IN THE U.S., AM. JUD. SOC'Y RESEARCH REP. 31-32 (1973) [hereinafter cited as PARNES & KORBAGES].

123. N.Y. CONST. art. VI, § 1(a).

124. *Id.*

125. *Id.*

126. *Id.* § 28.

is financed by state and local government,¹²⁷ and the rule-making power is exercised, in part, by the state legislature, the Judicial Conference and the Administrative Board of the Judicial Conference.¹²⁸ A recent study of the New York courts urged a drastic reorganization of the state's present court system.¹²⁹

Recent constitutional changes also claim to have established a unified court system in North Carolina "for purposes of jurisdiction, operation and administration."¹³⁰ The judicial power is vested in a single General Court of Justice,¹³¹ which itself is separated into three divisions—appellate, superior court, and district court.¹³² The appellate division consists of a supreme court and a court of appeals.¹³³ Supervision of the state's court system lies, at least in part, with the chief justice of the supreme court.¹³⁴ State and local governments finance the system.¹³⁵ The supreme court and the state's general assembly share the rule-making authority, but most of the rules originate from the court.¹³⁶

Other states also claim to have established unified court systems. However, upon close examination of all these court systems, crucial differences between them can be detected. Most often dissimilarities occur with respect to the number of different trial and appellate courts within the system, the manner of court financing, the exercise of administrative and/or supervisory power over the entire system, and the rule-making authority.

Court Unification as an Evolutionary Concept

While important differences exist between the court systems of

127. *Id.* § 29.

128. PARNES & KORBAKES, *supra* note 122, at 48.

129. AND JUSTICE FOR ALL, REPORT OF THE TEMPORARY COMM. OF THE N.Y. STATE COURT SYSTEM pt. I, ch. 1, at 7-17 (1973). The Report has been referred to as the Dominick Commission Report, after its chairman, D. Clinton Dominick.

130. N.C. CONST. art. IV, § 2.

131. Except, that is, for the court for the trial of impeachments. *Id.* §§ 1, 2, 4.

132. *Id.* § 2. The superior court is the state trial court of general jurisdiction. *Id.* § 12(3). The district court is the state trial court of limited jurisdiction. *Id.* § 12(4).

133. *Id.* § 5.

134. *Id.* § 11.

135. *Id.* § 20.

136. PARNES & KORBAKES, *supra* note 122, at 49.

the several self-proclaimed "unified" states, a closer examination of the court system of any one of these states reveals that the same "unified court system" label has been applied continuously even though the structure and administration of that particular state's court system has varied significantly over time. While some of the variations are minor, others are crucial to the operation and effectiveness of the system. Illinois is a good example.

Although the concept of the unified court system has been touted for some time, its actual implementation has occurred primarily within the past few years and in only a few states.¹³⁷ Illinois was the first jurisdiction to establish a state court system containing most of the major principles of the unified court concept.¹³⁸ The current Illinois court system actually took effect in January, 1964. However, its structure and operation have often been modified since then by both constitutional and statutory amendments.¹³⁹ For example, since 1964, the constitution has been modified so as to eliminate the office of magistrate of the circuit court,¹⁴⁰ and to expand both the assignment powers of the supreme court over circuit and associate judges¹⁴¹ and the supreme court's supervisory authority.¹⁴² In addition, numerous statutory amendments have been adopted to coordinate legislative acts with constitutional provisions and to implement constitutional mandates.¹⁴³

137. See AN ASSESSMENT OF THE COURTS OF LIMITED JURISDICTION, AM. JUD. SOC'Y REP. NO. 23 (1968); A SELECTED CHRONOLOGY AND BIBLIOGRAPHY OF COURT ORGANIZATION REFORM, AM. JUD. SOC'Y REP. NO. 12 (1970).

138. New Jersey appears to have led the way, however, through its reorganization scheme of 1947. For a description of New Jersey's efforts, see A. VANDERBILT, *THE CHALLENGE OF LAW REFORM* 96-106 (1955).

139. For a discussion of the Illinois constitutional amendment which was adopted by Illinois voters on Nov. 6, 1962, and whose judicial article became effective on Jan. 1, 1964, see G. BRADEN & R. COHN, *THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS* (1969); H. FINS, *ILLINOIS APPELLATE PRACTICE UNDER THE NEW CONSTITUTION* 3-13 (1973); *Special Supplement—The Blue Ballot Judicial Amendment*, 50 ILL. B.J. 649 (1962). For a discussion of the 1970 Illinois Constitution and its effects on the state judicial system, see FINS, *supra*, at 14-26; R. COHN, *TO JUDGE WITH JUSTICE: HISTORY AND POLITICS OF ILLINOIS JUDICIAL REFORM* (1973).

140. Compare note 119 *supra* with *Appendix: House Joint Resolution 39*, 50 ILL. B.J. 708, §§ 8, 12, at 709-10 (1962) [hereinafter cited as *Appendix*].

141. Compare ILL. CONST. art. VI, § 16 with *Appendix, supra* note 140, § 2, at 708.

142. Compare ILL. CONST. art. VI, § 16 with *Appendix, supra* note 140, § 2, at 708.

143. H. FINS, *ILLINOIS APPELLATE PRACTICE UNDER THE NEW CONSTITUTION* 8-13 (1973).

The court system operating today in Illinois thus is markedly different in several key respects from the system established pursuant to the 1962 Illinois Judicial Article. Undoubtedly the current Illinois system will continue to undergo modification through a combination of constitutional and statutory changes and court rules. The reality of the Illinois experience thus reveals the concept to be one of an evolving and a gradually changing nature.

Unification—A Meaningful Definition

As the preceding sections show, the phrases "unified court system" and "court unification" are quite confusing in several major ways. As they are now employed, the phrases refer to at least three somewhat different concerns. Court unification, as it is now used, may refer to the specific means of achieving certain goals relating to the reform of state court systems; in this context, unification is generally discussed in terms of models or standards. Use of the phrase in this manner is exemplified in commentaries such as those of the National Municipal League and the American Bar Association. Court unification, as it is now used, may also refer to a type of court system allegedly adopted through state constitutional and statutory amendments relating to court organization and judicial administration. Use of the phrase in this manner is exemplified by the judicial articles of such states as New York and North Carolina. Finally, court unification, as it is now used, may refer to the gradual implementation of changes in a state's constitutional, statutory, and court-made rules relating to court organization and judicial administration. Use of the phrase in this manner is exemplified by a review of the Illinois experience over the past ten years.

The authors' personal view on what is meant by the concept of a unified court system incorporates all three of the aforementioned concerns. We feel that the concept is not a rigid one; thus a single model or a single set of standards seem to be an inappropriate way of defining the concept. Rather, we feel that the concept is one which is amenable to the peculiar local features of any one state; and being so, the concept can take on varying forms as it is applied to the unique circumstances of a state which decides to adopt its rationales and principles. The core of the concept's present meaning

thus lies in its basic rationales and principles which may be applied to all court systems.

The authors' notion as to the concept's meaning may be summarized as follows:

1. The judicial system of an individual state necessarily contains elements of court organization and judicial administration;
2. Court organization refers to the number of courts within the judicial system, together with their territorial and subject matter jurisdictions;
3. Judicial administration refers to the extent of centralized administrative, supervisory, and/or managerial power exercised over both the judicial and non-judicial personnel of the court system;
4. The concept of a unified court system is concerned with improving the elements of court organization and judicial administration in all state judicial systems;
5. The concept embodies several major principles which are the means by which these elements of any judicial system can be improved;
6. Various rationales can be found to justify the promotion of the concept's basic principles.

In the following section, the authors' notion as to which principles are embodied in the concept will be examined together with their rationales.

THE BASIC PRINCIPLES OF THE UNIFIED COURT CONCEPT

Traditional Rationales of the Unified Court Concept

As discussed previously, the unified court concept is essentially concerned with the organizational and administrative elements of state judicial systems. Although the manner in which the concept has been used in this country since Pound's 1906 speech is quite confused, several basic themes appear throughout most commentaries dealing with the concept. Before examining the relationship of these basic themes to the authors' notion of the concept's basic principles, it first seems appropriate to review the general reasons usually given in support of court unification.

The motivations behind Roscoe Pound's initial call for unified courts seem as relevant today as they were nearly 70 years ago. Pound promoted court unification, in part, because of the contemporary "archaic" nature of American judicial organization and procedure. The situation has not changed dramatically since then.

"Multiplicity of courts is characteristic of archaic law."¹⁴⁴ Several state court systems still are deficient in this respect.¹⁴⁵ In many areas of the country today, a potential litigant discovers that he can choose between the original jurisdiction of either a state court, a county court or one of several municipal-based courts. And while several of these courts may function under the general supervision of their state supreme courts and/or state court administrators, others do not. In some states, in fact, it is even impossible to ascertain the names of those serving in judicial capacities—let alone gather meaningful data on the volume of their court system's caseload, facilities, finances, and similar matters.¹⁴⁶

Another characteristic of an archaic system according to Pound was the preservation of concurrent jurisdictions.¹⁴⁷ Pound believed that all original jurisdiction should be concentrated.¹⁴⁸ Yet today there are many states where a particular cause of action can be brought in two, three, or even more different courts within the same geographical area. This detracts and impairs the pursuit of economic efficiency and equal justice.

Pound also decried as archaic the waste of judicial power caused by: (1) "rigid districts or courts or jurisdictions," so that congestion resulted in one court while judges in another sat idle; (2) the consumption of court time with points of pure practice, with less judicial

144. Pound, *supra* note 2, at 62.

145. VANDERBILT, *supra* note 111. For more recent information on the various state court systems, see *State Court Progress at a Glance*, 56 J. AM. JUD. SOC'Y 427 (1973); U.S. DEPT. OF JUSTICE/LEAA, PRELIMINARY REPORT: NATIONAL SURVEY OF COURT ORGANIZATION 1971 (1972).

146. In the spring of 1973, the American Judicature Society undertook a major study of American courts of limited and special jurisdiction. As part of the study, the Society attempted to gather in various ways lists of all judges serving such courts. The attempts failed in many states for such lists were simply unavailable to officials of the state and local governments. Further information on this effort is available from the Society's Research Department.

147. Pound, *supra* note 2, at 63.

148. *Id.* at 64.

time devoted to the investigation of substantial controversies; and (3) the nullification of the results of prior judicial action through unnecessary retrials.¹⁴⁹ In one or more of these forms, much judicial energy still is being wasted in many present state court systems.

The reasons behind the earliest A.B.A. official position on court unification also seem as relevant today as when they were first introduced. The first major A.B.A. action proposing unified courts came in a 1909 special committee report and cited nine distinct advantages of the unified court concept. Several of these "advantages" coincided with Pound's earlier elaboration on the archaic American courts.

One major advantage put forward by the A.B.A. report was that unification

would bring about better supervision and control of administrative officers connected with judicial administration, and make it possible to introduce improved and more business-like methods in the making of judicial records and the clerical work of the courts.¹⁵⁰

Three years earlier, Pound had recognized the need for more supervision over the court's administrative personnel. Furthermore, Pound's later works on unification recognized the importance of judicial control over such non-judicial personnel as clerks.¹⁵¹

Another advantage referred to by the report was that unification "would allow judges to become specialists in the disposition of particular classes of litigation."¹⁵² The prevailing system of periodic rotation of judges between civil trials with juries, equity causes and criminal cases was described as unfortunate.¹⁵³ Pound later advocated the employment of specialized judges, but not of specialized courts.¹⁵⁴

Unification, the report went on, would facilitate the development of a true judicial department, eliminate waste in the utilization of judicial manpower, and do away with the bad practice of throwing cases out of court only to be begun over again elsewhere. In addition, it was contemplated that unification would help to eliminate

149. *Id.*

150. 34 A.B.A. REP. 595 (1909).

151. Pound, *supra* note 112, at 230.

152. 34 A.B.A. REP. 594 (1909).

153. *Id.* at 594-95.

154. Pound, *supra* note 112, at 231.

much of the unnecessary expense involved in the transfer of cases and the "unfortunate" innovations in the law of venue, avoid most of the pitfalls of appellate procedure, and reconcile many of the conflicts between judges of coordinate jurisdictions.¹⁵⁵ Such specific benefits usually are not cited today. Support for court unification usually is articulated in more abstract and general terms.

Since the early days of Pound and the A.B.A. Special Committee, reasons given to support court unification have only been echoes and refinements of the aforementioned reasons. Almost all of the current calls for court unification stress the importance of centralized supervision over administrative personnel, judicial personnel, and the various business-type operations of the courts. They point out the need for economic efficiency, equality of justice, and judicial independence. Further clarification of reasons behind the movement toward court unification probably can best be accomplished by examining the key principles of the unified court concept.

Principles of the Unified Court Concept

In the simplest terms, the principles can be viewed as the basic and essential components of the concept of a modern unified court system. However, this is not an adequate explanation. It seems that the unified court concept can only be defined by its principles, and there appears to be no single statement which can distinguish unified systems from non-unified systems even after the principles have been identified.

Viewing the notion of a unified court system simply as a concept which contains certain principles dealing with court organization, administration, and procedure, it is necessary to differentiate between unified and non-unified court systems on the basis of those unification principles inherent in any particular court system. Because many state court systems contain some of the principles while lacking others, there exist degrees of unification. Also, two state judicial systems which can be characterized as unified may have two entirely different court structures and modes of operation because they adhere to two different sets of unification principles. In short, it is difficult to discern exactly where the line should be drawn when

155. 34 A.B.A. REP. 593-94 (1909).

characterizing court systems as unified or non-unified. However, acknowledging this ambiguity, a discussion of unified courts and their underlying principles remains important. For reasons already mentioned, the principles of the unified court concept can help to alleviate many problems facing the court systems of states which choose to adopt them. And while certain unification principles may be inappropriate for individual states with peculiar local circumstances, consideration of the following principles and of their potential implementation seems to be a crucial step in all attempts to improve the quality of justice being administered in each of these states.

There appear to be two types of principles of court unification—those over which there has been little disagreement and those over which there has been and presently is much controversy. We shall start with an account of the former types for they are easier, and then proceed to discuss the more controversial principles.

One of the basic principles consistently embodied in the unified court concept over which there has been little disagreement centers on the necessity for a simplified state court structure.¹⁵⁶ All proponents of the unified court concept have underscored the need for eliminating the myriad of minor courts which typically exist in a non-unified system.¹⁵⁷ While non-unified court systems vary in their numbers and their types of limited and special jurisdiction courts, generally they include a mixture of county-wide and municipal, village or township courts.¹⁵⁸ In this decade there still are some state judicial systems that possess at least ten different kinds of courts below their trial courts of general jurisdiction.¹⁵⁹

The need for a simplified court structure is proposed in order to eliminate many of the injustices and economic inefficiencies which result from the proliferation of minor courts. Injustices often arise because the limited jurisdiction courts usually are not supervised adequately. Often these courts are not subject to the control of the state

156. See COURTS, *supra* note 105, standard 8.1, at 164; STANDARDS OF JUDICIAL ADMINISTRATION, *supra* note 91, § 1.10, at 1-2.

157. Compare, e.g., *Model State Judicial Article*, *supra* note 66 with COURTS, *supra* note 105, standard 8.1, at 164 and STANDARDS OF JUDICIAL ADMINISTRATION, *supra* note 91, § 1.10, at 1-2.

158. U.S. DEPT. OF JUSTICE/LEAA, PRELIMINARY REPORT: NATIONAL SURVEY OF COURT ORGANIZATION 1971 (1972).

159. *Id.*

court administrator, and they are practically unknown to those holding executive responsibility for their states' entire court system. In many states accurate listings of the names of judges serving in many of these minor courts is not even available.¹⁶⁰

Economic inefficiencies arise partly because many of the minor courts possess concurrent jurisdictions and because often there exists the absolute right to de novo review of a minor court judge's decision. Also, there is often a great imbalance in the workload among these courts, with some minor court judges overburdened and other judges holding similar positions underworked. What makes matters worse in this last respect is that adequate avenues rarely exist for correcting such imbalances; for example, few states provide for the temporary assignment of limited jurisdiction court judges to courts other than their own when the workload of the limited courts favors such a shift.

Proponents of the unified court concept have urged adoption of a two,¹⁶¹ three,¹⁶² and sometimes four¹⁶³ level court system. This difference in the number of levels does not necessarily represent a difference in the types of trial courts being proposed; for example, a three-level court system may differ from a two-level system only with respect to the independent nature of the intermediate appellate court.¹⁶⁴ The basic controversy between advocates of the unified court concept centers on the value of a court of limited jurisdiction within the unified court structure. Some persons argue for only one general trial court, with divisions, subdivisions and/or branches exclusively dealing in minor civil and criminal matters.¹⁶⁵ Others propose the establishment of both a state-wide court of general jurisdiction and a state-wide court of limited jurisdiction.¹⁶⁶

One state-wide trial court of general jurisdiction probably is all that is required within a unified court system. However, under cer-

160. This is particularly true with respect to justices of the peace; the state of Texas will exemplify the point if one attempts to learn of their justices' activities.

161. *The Case for a Two-Level State Court System*, 50 J. AM. JUD. SOC'Y 185 (1967).

162. *Model Judiciary Article: Introduction*, *supra* note 12, at 133.

163. 87 A.B.A. REP. 392 (1962).

164. *The Case for a Two-Level State Court System*, *supra* note 161, at 186; STANDARDS OF JUDICIAL ADMINISTRATION, *supra* note 91, § 1.13, at 23-24.

165. COURTS, *supra* note 105, standard 8.1, at 164.

166. 87 A.B.A. REP. 392 (1962).

tain circumstances, a state-wide limited jurisdiction court might function quite well and differ little from divisions of a single state-wide trial court of general jurisdiction which handles only minor matters. Consequently, it is possible for a system with two, three or even four levels of courts to be characterized as having a simplified court structure. The key lies not in the number of courts handling cases but in the state's method for handling cases brought before its courts.

A second basic principle usually embodied in the unified court concept focuses upon the need for centralized supervision of both a state's judicial and non-judicial court personnel.¹⁶⁷ Responsibility for such supervision can rest, in part, with the supreme court,¹⁶⁸ the chief justice,¹⁶⁹ or with a council of judges.¹⁷⁰ What is important is not who actually possesses such control, but rather whether such supervisory power exists and ultimately is vested in the judiciary.

Centralized supervision of a state's courts under a unified system helps to promote equality in the administration of justice within the state. Such supervision includes uniform rules of pleading, practice, and procedure; general rules on court administration; and provisions for continuing educational programs. While complete uniformity and absolute control is impossible and undesirable, a state's trial courts should function wherever possible under similar sets of guidelines, rules and working conditions.

Rules of pleading, practice, and procedure are addressed primarily to parties appearing before a state's courts. They are designed to govern the presentation of individual cases.¹⁷¹ While procedural rules may vary to accommodate special local needs, a set of uniform rules of procedure that are applicable state-wide as far as practical is crucial to assure the even-handed administration of justice within the state. The value of uniform rules has been described as follows:

[T]he value of uniform rules is very great. They establish standards of fairness and efficiency to which all may look. They are guidelines for the judges, directives and authorizations for auxiliary court personnel, and authoritative references for the lawyers. They are a check on favoritism, corruption, and local prejudice. Their formulation involves deliberations in

167. STANDARDS OF JUDICIAL ADMINISTRATION, *supra* note 91, § 1.32, at 57.

168. *Id.*

169. 87 A.B.A. REP. § 8, at 397-98 (1962).

170. STANDARDS OF JUDICIAL ADMINISTRATION, *supra* note 91, § 1.32, at 57.

171. *Id.* at 8.

which all relevant interests, objectives and constraints may be taken into account. They apply the principle that government should be of law, rather than men, even in the administration of justice itself.¹⁷²

Rules on court administration include general guidelines for the work of both judicial and non-judicial court personnel. For example, under the unified court concept, judicial personnel should be subject to possible temporary assignments to other courts throughout the state, to general uniform rules on such matters as docketing and calendaring, and to possible service on or consultation with judicial councils and/or conferences.

The employment by a state's court system of non-judicial personnel should be subject to uniform standards governing recruitment, hiring, removal, compensation, and training.¹⁷³ Non-judicial officers should be guided by uniform rules promulgated by a central administrative authority on such matters as accounting and auditing procedures, collection and dissemination of court statistics, and budgeting requests. Supervisory responsibility for the court's non-judicial personnel in a unified system usually is delegated to a state court administrator.¹⁷⁴

Centralized supervision might also entail compulsory state-wide training programs for both judicial and non-judicial personnel. Such programs provide a convenient means of communicating general court policy. In addition to their educational value, they reinforce a sense of common purpose among a court system's staff.¹⁷⁵

Effective supervision of a state's court system requires a proper balance between central control and individual autonomy. The balance will differ in each state, depending upon local traditions, population, history, terrain, and politics. However, a unified state court system always will contain a high degree of centralized authority which commands the respect and loyalty of a large number of local judicial units.

A third basic principle of the unified court concept is state assumption of all or a substantial part of the financial responsibility for the

172. *Id.* at 9.

173. COURTS, *supra* note 105, standard 9.1, at 176.

174. *Id.* at 176-79.

175. STANDARDS OF JUDICIAL ADMINISTRATION, *supra* note 91, at 9.

state court system. Such an arrangement has been justified as follows:

Financing by local government leads to fragmented and disparate levels of financial support, particularly for auxiliary court services; to direct involvement of the judiciary in local politics; to rigidity and very often parsimony in provision of needed resources; and to divided and ineffective efforts to make use of the increasing level of financial grants to state government that are being provided by the federal government. Dispersion of financial responsibility and financial management tends also to disperse responsibility for administration and policy, so that the court system cannot be operated according to uniform procedures and standards even when this is attempted through administrative policy and supervision.¹⁷⁶

Currently there is little or no dispute over inclusion of these three basic principles in the unified court concept. Disagreements do arise concerning the proper limits to which such principles should apply. For example, there is some disagreement over the value of a state-wide court of limited jurisdiction and over the meaning of "non-judicial" personnel (*i.e.*, should it include personnel in pretrial release, probation or other rehabilitative services¹⁷⁷).

At times other principles for the unified court concept have been proposed, but they appear to be inappropriate for inclusion. One such principle concerns the manner of judicial selection and retention.¹⁷⁸ Although the quality of judicial personnel may be the crucial factor in determining whether the implementation of the unification principles proves successful, it is incorrect to assume that only a certain manner of selecting or retaining judges will provide the financial, administrative or structural ingredients necessary to successfully unify a state court system. One particular scheme of judicial selection and tenure is thus not a basic tenet of court unification.

Nor is the specific jurisdiction of the unified trial court crucial to successful court unification. Although at least one major study has concluded that, in a unified state court system, certain traffic violations should be placed under the jurisdiction of a state administrative agency,¹⁷⁹ it cannot be said that such a limitation is necessary to as-

176. *Id.* at 73.

177. COURTS, *supra* note 105, standard 8.1, at 164; *Note, Administration of Pretrial Release and Detention: A Proposal for Unification*, 83 YALE L.J. 153, 177 (1973).

178. *See* STANDARDS OF JUDICIAL ADMINISTRATION, *supra* note 91, § 1.10, at 1; *cf.* Pound, *supra* note 112, at 233.

179. COURTS, *supra* note 105, standard 8.1, at 164 and standard 8.2, at 168.

sure the successful achievement of the goals of the unified court concept. For example, the unified trial courts in Illinois have handled traffic violations for over ten years and there is no indication of any future change. While the unified court concept contains sufficient flexibility to include or exclude almost any type of case deemed appropriate by the state legislature, the unified state court system must have the jurisdictional authority of its courts defined in a uniform way, so that all courts at each level in the system have identical jurisdiction.¹⁸⁰

A third principle associated with the concept of court unification mentioned by others, but distinguished here, concerns the types and qualifications of judicial officers serving in state trial courts. For example, one study has concluded that, in a unified state court system, "all judicial functions in the trial courts should be performed by full-time judges"¹⁸¹ and "all judges should possess law degrees and be members of the bar."¹⁸² Still another study has indicated in its general discussion of the general principles of court unification that the judicial functions of the trial court should be performed by

a single class of judges, assisted by legally trained judicial officers (commissioners, associate judges, magistrates and similar officials) assigned to such matters as preliminary hearings, non-criminal traffic cases, small claims, and responsibilities usually discharged by lower court judges, referees, or hearing officers.¹⁸³

Neither study seems to focus on the relevant issues. The objectives of a unified court system appear to be attainable with or without the use of parajudicial officers in the trial courts so long as centralized supervision by other judicial officers is maintained.¹⁸⁴

THE UNIFIED COURT CONCEPT AND THE FUTURE ADMINISTRATION OF JUSTICE

The principles of the unified court concept have played and will continue to play a major role in the attempts to reform the organization and administration of various state court systems. However, the significance of the concept's future role will vary from state to state

180. STANDARDS OF JUDICIAL ADMINISTRATION, *supra* note 91, § 1.11, at 2.

181. COURTS, *supra* note 105, standard 8.1, at 164.

182. *Id.*

183. STANDARDS OF JUDICIAL ADMINISTRATION, *supra* note 91, § 1.10, at 2.

184. PARNES, *supra* note 98.

depending upon the manner chosen by each state to implement the principles, if any, and upon which principles each state chooses to emphasize.

*Factors Relating to the Variation in Significance of the Unified
Court Concept from State to State*

Even though the concept of the unified court system will play some role in the individual states' continual efforts to re-evaluate and improve their court systems, the variations in the degree of attention which the states will pay to the concept depend upon several factors which are unique to each of the states.

One such factor influencing the concept's future impact in any one state is the level at which the state has already achieved all or some of the concept's several major principles. In a sense, the unified court concept and its principles compete in every state with other concepts and principles also designed to help in improving the state's court system. They also compete for consideration with proposed reforms in non-judicial areas. If a state has adopted many of the unification principles, the impetus for adoption and/or extension of further unification principles may be slowed. This would be particularly likely in states where major problems with the court system exist but are unrelated to the areas of court organization or judicial administration.

Another factor affecting the concept's impact on any one state is a state's demographic features. For example, centralization of supervisory authority may be achieved more easily in smaller, denser areas than in larger, sparsely settled areas. However, Alaska stands out as an exception to this observation. A state's court system also must be flexible with respect to its organization and procedure to operate effectively where a certain segment of the state has a unique demographic feature. For example, a locality may have a sharply varying population because of its tourist industry, or it may have a specialized residential body such as a community of older, retired families or a college community. An effectively organized court system must also take into account the state's physical terrain. The elimination of limited jurisdiction courts where travel between various population centers is difficult and/or involves rather lengthy distances is a different problem from that concerning the elimination

of limited courts in a state where intrastate travel generally is quite easy.

Political, cultural, and/or historical features of a state make up yet another factor to be considered. It may be easier to achieve uniformity of judicial procedure and centralization of supervisory powers in states where the population is more homogeneous in their political and cultural attitudes. For example, public opinion in many areas of the country generally is sympathetic to the idea of local control, and associates centralization of any governmental power with such evils as massive bureaucracy, red tape, and corruption. Effectuating unification principles also may be easier to accomplish in states with less of a tradition of local government independence from state government.

A final factor affecting the significance of court unification in the process of re-evaluating and reforming the state court system is the balance of government power in the state. The strength of the state court system vis-à-vis the other branches of state government is important. But also important are the extent and nature of locally financed courts within the state (compared to state financed courts), the strength of the state's municipal and county governments, and the state supreme court's view of its own constitutional, statutory, and inherent powers.

As the above mentioned factors show, the individual states may vary widely with respect to the significance of the unified court concept. There are great differences between the states regarding the future importance of the unified court concept. Furthermore, there are likely to be sharp differences in the reasons why individual states fail to adopt or to even consider many or any of the unification principles.

Variation in the Focal Point of States Implementing Principles of Court Unification

Once a state legislature and/or judiciary decide that the concept and principles of unification are significant, the central issue becomes which principle or principles will be implemented to improve the operation of the state's court system. States will doubtless continue to differ as to which aspects of the unification concept merit atten-

tion. These differences will arise, in large part, because of the variation in the states' balancing of the factors mentioned earlier which affect the significance of the concept from state to state.

For example, the factor concerning the level or degree to which a state has achieved unification will help determine which principles are to be focused on in the future. A state whose court structure is quite complicated will probably initially concentrate on creating a new, simplified structure. Texas serves as a good illustration; there is a strong push in that state today to eliminate many of that state's limited courts. For a state with numerous types of limited courts, the chances of establishing a centralized supervisory power which can effectively manage all the state's courts is quite remote. However, this is not always the case. New Jersey has been very active in developing an effective supervisory system over the state's judges since 1947, yet its court structure has remained quite complex throughout.

The factor relating to the division of power between the branches of the state government, as well as to the relative strength of the various local governments, will also affect the determination of which principles are to be future focal points. This factor will particularly influence decisions made concerning what changes, if any, are to occur in the area of court financing. State assumption of responsibility for financing the entire court system is often opposed by local governments because court-generated revenues might become lost for local treasuries. Thus, the extent of power held by local governmental authorities and the degree to which it can be used to influence state legislative actions and proposed constitutional amendments may be the crucial issue in any reform effort aimed at a court system's financing structure.

Variation in the Manner of Implementing the Principles of Court Unification

Once a state legislature and/or judiciary decide that a certain deficiency exists in the operation of the state's court system and decide that implementation of a principle or principles of the unified court concept is the best means of eliminating that deficiency, the central question then becomes what is the best manner of implementing the principle or principles.

There are several ways in which principles of court unification can be implemented. The way chosen will depend heavily on some of the uniquely local factors already alluded to. It is possible to characterize a state court system with either two, three, or four tiers as embodying the principle of a simplified court structure. But factors of demography and balance of government powers will be important in any state's decision to establish a two, three, or four tier court system.

Centralized supervision over a state's entire court system has been cited as another principle of the unified court concept. Such administrative power over the so-called unified court system of New York is located in the Administrative Board of the Judicial Conference, while such power under the Illinois unified system lies with its supreme court. In California, where the court system is not considered unified, much supervisory power over the state's trial courts is exercised by the Judicial Council. In each state, the important aspects regarding supervision are that, first, it is occurring; second, the responsibility for the entire system is centralized; and, third, supervision is exercised primarily by members of the court system.

Thus the need for implementing the principles of the unified court concept is not really based on such necessities as having only a certain number of courts in the system or having only a certain source of all supervisory powers. Rather, the need for implementing the principles is really the need for a state court system to achieve certain desired results. The adoption of the principles of the unified court concept in any suitable manner helps to promote the cause of a more efficient and effective state court system. Clearly, there are several different paths to follow in this respect and they all can lead to the promotion of the cause.

Variation in the Extent to Which the Principles of Court Unification are Implemented

Once it is decided to implement a certain principle of court unification in a certain manner, the final question concerns the extent to which the principle should be carried. States which decide to implement one of the aforementioned unification principles in a particular manner may still differ in the extent to which they decide the principle is to be implemented. For example, several states which

claim to have simplified their system's court structure still have substantially dissimilar types of courts. One state decided to maintain only one form of trial court, while another maintained two. But a third state has maintained at least five trial courts. These differences do not necessarily indicate that any of these states has failed to achieve the goals of a simplified court structure. However, a closer examination of those states which claim to have simplified their court structure indicates that at least some of them recognized their failure to fully simplify their court system's structure. For some of these states, then, the recent structural reforms constitute only a step in the movement toward a completely unified court structure.

Also, where the principle of centralized supervision over judicial and non-judicial personnel has been implemented recently, the degree of the supervision itself and its form varies from one state to another. State court administrators have set up different schemes for budgeting, recordkeeping, recruitment of non-judicial personnel, and the like.

The question of the extent to which any of the unification principles should be extended appears to be one which can never be finally settled. In truth, the question probably will remain part of the concern of those who continually reassess the role and performance of various state court systems and who are thus forever searching for means of improving the efficiency and effectiveness of those systems. States like Illinois, which have implemented all of the major principles of the unified court concept, must continue to evaluate the limits to which they will apply the principles. However laudatory Illinois' efforts toward unification may be, the state still must resolve important questions with respect to the dimensions of the concept and its principles.

For example, initial decisions were made in Illinois concerning the nature of its unified trial court. These decisions have been re-evaluated and altered as conditions have warranted. With respect to the principle of centralized supervision, Illinois continues to redefine its ideas on the meaning of such terms we have used as supervision, judicial personnel and non-judicial personnel. In this context, the following types of questions arise: Does the unified trial court need additional non-judicial and/or judicial positions; should the court, by its own action, create parajudicial positions; and should the courts

bring new forms of non-judicial personnel such as marriage counselors under their centralized supervision? Decisions on these kinds of questions must be made initially, and must be continually re-evaluated. Also, with respect to court financing, the balance in Illinois between local and state funding receives constant review and re-assessment.

CONCLUSION

The significance of the unified court concept for the future disposition of justice in America seems quite clear. The concept will continue to play a crucial role in all attempts to reform the structure, organization, and administration of the various American court systems because the applications of the principles of court unification are essential to the achievement of efficient and just systems. The constitutional requirements of due process and equal protection mandate such applications.

However, in assessing the future relevance of the concept and its principles, states must be extremely cautious not to apply too narrow or too rigid a construction to the court unification concept. In the past, too many states and too many commentators have discussed and applied the concept in its most limited terms. In the future, the concept of the unified court system should be viewed as containing elements of both flexibility and gradual implementation. States should continue to employ the unification concept in their attempts to improve the operation of their court systems by continuing to redefine and apply the concept's set of general principles dealing with court organization and judicial administration.

The focus of this Article until now has been on the concept of a unified court system and on its importance in the reformation of state court systems. As it has been defined, the concept is concerned with the elements of court organization and judicial administration.¹⁸⁵ The authors feel the time will soon come to move from consideration of the concept of a unified court system to consideration of a concept involving a unified judicial system. While the distinction may at first seem semantic, the authors feel the difference is crucial. The change in focus would allow a much more expansive construction to be given to the aforementioned element of judicial administration.

185. See text, *Unification—A Meaningful Definition*, pp. 23-24 *supra*.

The element of judicial administration has been said to refer to "the extent of centralized administrative, supervisory, and/or managerial power exercised over both the judicial and non-judicial personnel of the court system."¹⁸⁶ It is the last phrase in this description of judicial administration which necessitates a change in focus. While the unified court concept contemplates centralized supervision by the judiciary of such non-judicial court personnel as clerks, stenographers, and reporters, the concept of a unified judicial system would allow judicial supervision to be expanded to include such non-judicial, court-related personnel as probation or parole officers, juvenile counsellors, and prison officials. The decisions as to whether to expand the judiciary's supervision, the degree of such supervision, and who in the judiciary will undertake the actual supervision must of course be made individually by each state on an individual basis. But moving toward a concept of the unified judicial system would extend the dimension of the dialogue and the possibilities for broader application of the unification principles.

Such a shift in the meaning of the concept would facilitate a more system-oriented approach with respect to state court systems. A state judicial system is composed of more than a number of courts. It consists of all the various institutions which the courts utilize prior to, during, and after court decisions are made. Consideration of the concept of a unified judicial system would justify application by the judiciary of the unification principles of centralized supervision to court-related institutions. Court-related institutions include jails; state prisons; pretrial diversion centers dealing with such matters as rehabilitation of alcoholics, drug addicts, and juvenile offenders or delinquents; probation offices; parole boards; prison disciplinary boards; compulsory and voluntary arbitration panels; conciliation bureaus; pretrial detention centers; and so-called "community moots."¹⁸⁷

The authors feel that centralized judicial supervision of some of these court-related institutions would not present an undue burden for the judiciary and would not present a separation of powers problem. It is not anticipated that members of the judiciary would run

186. See text, p. 24 *supra*.

187. Danzig, *Toward the Creation of a Complementary, Decentralized System of Criminal Justice*, 26 STAN. L. REV. 1, 45 (1973).

the prisons on a day-to-day basis, or even serve on the regular court-sponsored arbitration panels. Rather, the judiciary would oversee the operations of some of the court-related institutions to assure that uniform rules, procedures, and practices are employed wherever possible and as often as possible throughout the state for people substantially in similar positions.¹⁸⁸ Constitutional due process and equal protection guarantees require no less, and have been used in litigation aimed at obtaining such oversight.

Extension of the court unification concept's notion of centralized supervision has been alluded to in at least one recent major commentary. The National Advisory Commission on Criminal Justice Standards and Goals stated the following about court unification in one of its reports: "Pretrial release services, probation services, and other rehabilitative services should be available in all prosecutions within the jurisdiction of the unified trial court."¹⁸⁹ In subsequent commentary the Commission's report stated:

Not only are present provisions for pretrial services for lower courts inadequate, but the general lack of coordination among different courts in regard to pretrial release matters has unfortunate consequences for those charged with offenses as well as for the general public.¹⁹⁰

Other commentators have pointed out the possibility of judicial supervision over non-judicial, court-related personnel who operate in court-related institutions.¹⁹¹

In essence, court unification is an evolutionary concept which can never be defined in absolute terms. At most, it is a concept whose general principles can be of enormous aid in any attempts at reforming state court systems.

188. Obviously, local experimentation and differences due to peculiar local needs would be accommodated. See text, *Factors Relating to the Variation in Significance of the Unification Concept from State to State*, pp. 34-35 *supra*.

189. COURTS, *supra* note 105, standard 8.1, at 164.

190. *Id.*, standard 8.1 commentary, at 166.

191. See Danzig, *supra* note 187; Note, *Administration of Pretrial Release and Detention*, *supra* note 177; PARNES, *supra* note 98.